

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 16 1996

In the Matter of

**IMPLEMENTATION OF THE LOCAL
COMPETITION PROVISIONS IN
THE TELECOMMUNICATIONS ACT
OF 1996**

CC Docket No. 96-98

MAY 16 1996

To: Common Carrier Bureau

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COMMENTS OF

**NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS
GRAY PANTHERS
UNITED SENIORS HEALTH COOPERATIVE
UNITED HOMEOWNERS ASSOCIATION
NATIONAL HISPANIC COUNCIL ON AGING
NATIONAL TRUST/TRUSTNET
NATIONAL ASSOCIATION OF COMMISSIONS FOR WOMEN
NATIONAL COUNCIL OF SENIOR CITIZENS**

The undersigned parties ("Commenters") hereby submit these Comments in response to the Commission's Notice of Proposed Rulemaking in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 96-182 (released April 19, 1996) (the "Notice").¹

¹ These Comments are timely filed pursuant to the Notice.

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1. Commenters consist of a variety of consumer interests, including rural, senior, and general consumers. Commenters have an interest in the methods the Commission uses to implement the directives contained in the Telecommunications Act of 1996 (the "1996 Act").² In these Comments, Commenters emphasize that the Commission must implement the 1996 Act in a manner that does not overlook the ability of all consumers, including seniors, homeowners, people living in rural communities, people with disabilities and others, to continue to have access to telephone networks.

I. EQUITABLE INTERCONNECTION RULES ARE AN IMPORTANT STEP TOWARD COMPETITION.

2. Commenters support ongoing competition for consumers, in both the business and residential areas. If properly implemented, the 1996 Act should lead to lower prices, better service and a wider range of products and services. Commenters recognize, however, that as consumers, they have a responsibility to educate themselves regarding the duties of local exchange carriers, both incumbent and otherwise, and of telecommunications carriers, in providing service to consumers. Commenters have taken on that responsibility by responding to the Commission's Notice.

3. Commenters urge the Commission not to replace the basic principles that have helped establish the telecommunications industry as it exists today. Commenters also urge the Commission to preserve universal service and promote the provision of service by telecommunications providers to all segments of the public. These safeguards are necessary for consumers to realize the benefits that a competitive marketplace can bring.

4. The regulations that the Commission adopts governing interconnection to the local

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, sec. 101 *et seq.*

telephone network will be an important step toward establishing a competitive telecommunications marketplace. The rules that the Commission adopts must balance the rights and needs of incumbent providers with those of new entrants, while at the same time ensuring the overall vitality and security of the nation's telecommunications system. The Notice is the first step in balancing the many interests to be accounted for in implementing the 1996 Act.

II. DECISIONS ABOUT INTRASTATE TELECOMMUNICATIONS SHOULD REMAIN AT THE STATE LEVEL.

5. Each state has its own unique history, population patterns, culture, economic performance, and social challenges. These unique interests have led states to adopt different telecommunications infrastructures and to adopt different approaches to regulation. These interests now also present each state with a unique set of challenges for attaining the infrastructure it needs to maintain a competitive telecommunications marketplace. For example, a large, rural state such as Nevada is not likely to utilize the same model in preparing telecommunications regulations as a smaller, densely-populated state such as Connecticut. Similarly, Delaware, a state served entirely by a Regional Bell Operating Company ("RBOC"), is not likely to utilize the same telecommunications infrastructure as the state of Iowa, a state that is served by more than one hundred and fifty (150) independent telephone service providers as well as US West. Furthermore, states such as Wisconsin are already far ahead of others in adopting regulations governing local competition.

6. The Communications Act of 1934 establishes states' jurisdiction over intrastate telecommunications providers.³ State jurisdiction over intrastate telecommunications providers

³ 47 U.S.C., Sec. 221(b)

maximizes policy makers' responsiveness to the needs and circumstances of their own citizens and businesses. State jurisdiction also provides for rulemaking proceedings to be conducted at the state level, rather than at the Commission, thus increasing the likelihood that local public interest groups will participate in the proceedings. A strong state role also allows for the development of innovative approaches to interconnection, while uniform national rules do not allow for flexibility, innovation and improvements.

7. In the Notice, the Commission notes that, in implementing the 1996 Act, it may "build upon actions some states have taken to address interconnection and other issues related to opening local markets to competition."⁴ However, utilizing a few states' regulations for examples will not account for all of the variations that exist among the states and some states whose regulations appear to be outdated may lead the way in competition in the coming years. Allowing states to have jurisdiction over intrastate telecommunications providers will also prevent the states, incumbent telecommunications providers, and market entrants from having to make unnecessary expenditures to conform to a national standard that may not be the most expedient path for the parties involved. Finally, permitting states to have jurisdiction over intrastate telecommunications providers is consistent with Congress' intent in adopting the 1996 Act to reduce the amount of regulations governing telecommunications providers.⁵

8. The arguments raised by the Commission in favor of federal regulation of intrastate telecommunications providers are unconvincing. Although a single set of federal

⁴ Notice, par. 29.

⁵ See, e.g., Notice, par. 1 ("the 1996 Act seeks to develop robust competition, in lieu of economic regulation, in telecommunications markets.")

regulations to govern all of the states may make it somewhat easier for new, large entrants to interconnect, the interests of these entrants must not come at the expense of the public. In addition, Commenters oppose the notion that "[e]xplicit national rules implementing section 251 can be expected to reduce the capital costs of, and attract investment in, new entrants by enhancing the ability of the investment community to assess an entrant's business plan."⁶ The Commission's role in implementing the 1996 Act is not to make investors' lives easier, or to reduce the cost of investors' entry into the telecommunications marketplace, but rather to assure that entrants do not face artificial barriers as a result of unnecessary regulation. Furthermore, the Commission should not attempt to "limit the effect of the incumbent's bargaining position on the outcome of the negotiations" by narrowing the range of possible results.⁷ Competition should increase the range of results, not narrow it.

9. Commenters would support the Commission's establishment of guidelines that states could use as models in implementing certain aspects of interconnection to the local network. Creation of a standardized negotiations process, for example, between incumbent providers and new entrants that included standard forms for sharing technical information or standard definitions and terminology that could be used in many different locations would be especially useful in increasing competition in the local exchange markets. These standard forms could reduce a portion of the overhead costs associated with conducting negotiations in several states, without precluding unique solutions to the negotiations themselves. There is nothing which prevents the Commission from adopting general guidelines that will encourage a basic

⁶ Notice, par. 30.

⁷ Notice, par. 31.

level of standard approaches. Commenters recommend that, except in the most limited circumstances, the standard forms should be provided as guidelines, not as absolute requirements.

10. In order to implement the 1996 Act properly and efficiently, states must be given the opportunity to respond to the needs of their individual citizens whenever possible. Accordingly, Commenters urge the Commission to utilize the following guidelines in establishing interconnection requirements:

(a) Limit regulations governing interconnection to an absolute minimum, leaving room for parties to negotiate amongst themselves and for states to resolve conflicts;

(b) Establish a goal of assisting states in developing unique models that take into account existing conditions in each state, rather than choosing the most pro-competitive policy from among the different states; and

(c) Focus on developing materials and guidelines that would reduce the overhead costs of state-by-state negotiations, rather than attempting to eliminate those negotiations.

III. PRICING ARRANGEMENTS SHOULD PROTECT THE LOCAL INFRASTRUCTURE.

11. As Congress drafted, and then debated, the 1996 Act, one theme remained consistent throughout: universal service must be maintained, and possibly extended. As the telecommunications marketplace makes the transition to competition in the local exchange markets, the Commission must focus on the details of how to build universal service protections into the new regulatory regime. The Commission correctly recognized that the separate proceedings on universal service, interconnection, and access charges are all pieces of a

comprehensive restructuring of regulation.⁸ As a result of this interrelationship, Commenters also urge the Commission to consider the impact of interconnection upon universal service.

12. Commenters stress that the Commission should strive to promote competition to the fullest extent possible, thereby helping to promote universal service. At the same time, public policy must support universal access to the public telecommunications network, especially by low income, senior, disabled and rural consumers. Within these guidelines, the Commission should implement interconnection and pricing regulations that assure incumbent providers are compensated for costs associated with interconnection, and are allowed the opportunity to earn a reasonable amount of funding to cover incurred investments. Pricing of bundled and unbundled elements by incumbent providers must, therefore, take into account both the forward costs of providing interconnection and the investments they have already placed on their public networks.

13. Commenters envision the future telecommunications marketplace as permitting incumbent local telephone providers to sell their services at both retail and wholesale prices, bundled and unbundled, based upon their customers' needs. These customers will, in turn, repackage and resell the services, while others will combine the services with elements of their own networks and create other services. All of these services can be sources of income for the local telephone exchange carrier; however, each of these services will rely upon the investments the local exchange carrier has made in maintaining the facilities as well as the local exchange carrier's ongoing operating expenditures and current capital investments for maintaining and upgrading equipment. For example, the array of elements which bundled together constitute

⁸ Notice, par. 3.

basic local service are resident within a Class 5 local exchange office. Costs associated with running and maintaining the office (i.e., maintenance of the building, utilities, local taxes and fees) should be taken into account in establishing rates for unbundled elements. For these reasons, Commenters support the ability of incumbent local exchange carriers to receive a profit from telecommunications providers that interconnect with the carriers' facilities.

14. Based upon Commenters' vision of the future telecommunications marketplace described above, the Commission's proposal to separate out and charge only incremental costs for wholesale services would unfairly alter the telecommunications industry's economics in favor of the wholesalers' services.⁹ Although this strategy might initially lead to increased competition, before long, customers, and shareholders, of the universal public network would be forced to subsidize the customers and shareholders of new entrants. This scenario would also discourage new capital investment by incumbent providers or cause investors to focus on high-competition, high-density areas. In time, the 94% telephone penetration rate, one of the nation's largest economic and social assets, would diminish significantly.

15. Commenters emphasize the need for interconnection regulations that protect universal service. At a minimum, the interconnection regulations adopted by the Commission should reflect the following guidelines:

(a) Interconnecting companies should pay a reasonable fee for accessing the public network, based upon the costs incurred by the incumbent carrier in establishing and maintaining the facilities;

(b) Maintaining the access charge system, which reimburses local carriers for use of

⁹ Notice, par. 178.

their networks by other carriers and providers, at least until the Commission restructures the access charge system, and not permitting interexchange companies to utilize the issues raised in the Notice to avoid the access charge system by buying unbundled elements and rebundling those elements in a way that circumvents the access charges; and

(c) Recognizing that universal service depends on access to the public telephone network, or networks, making the point of interconnection to the public network(s) a key nexus in defining and assessing telecommunications providers' universal service obligations.

WHEREFORE, in light of the foregoing, Commenters respectfully request that the Commission adopt regulations governing interconnection to the local exchange network in accordance with the views expressed in these Comments.

Respectfully submitted,

A handwritten signature in black ink, reading "Aliceann Wohlbruck". The signature is fluid and cursive, with the first name "Aliceann" and last name "Wohlbruck" clearly distinguishable.

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